IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

Co.Appeal.No. 17 of 2003()

AGAINST THE ORDER DATED 02/05/2003 IN CP.17/02 and CP.18/2002 of ADDITIONAL PRINCIPAL BENCH, COMPANY LAW BOARD, CHENNAI

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APPELLANT/PETITIONER:

O.PADMANABHAN, AGED 43, S/O.LATE GOVINDAN NAIR, DIRECTOR, M/S. SUPRA HI-TECH ELECTRO EQUIPMENTS PVT.LTD., SUPRA HOUSE, PALARIVATTOM P.O., RESIDING AT FRANCIS COTTAGE, PALAPARAMBIL, FATHIMA CHURCH ROAD, COCHIN - 20.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS: RESPONDENTS:
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1. M/S.SUPRA HI-TECH ELECTRO EQUIPMENTS PVT.LTD., 32/86A, SUPRA HOUSE, CHAKKARAPARAMBU H.H.BYEPASS, PALARIVATTOM P.O. COCHIN - 682 025. REP. BY ITS MANAGING DIRECTOR, MR.M.V.JAYAGOPAL.

2. M.V.JAYAGOPAL, AGED 37, S/O.LATE M.G.VIJAYAN MENON, MANAGING DIRECTOR, M/S.SUPRA HI-TECH ELECTRO EQUIPMENTS PVT.LTD., RESIDING AT "USHUS", OPP.POWER HOUSE ROAD, PALARIVATTOM, COCHIN - 25.

3. T.J.SUBASH, AGED 38, S/O.JANARDHANAN, DIRECTOR, SUPRA HI-TECH ELECTRO EQUIPMENTS PVT.LTD., RESIDING AT 4C, PMJ TOWERS, VIDHYA NAGAR, COCHIN - 682 020.

BY ADV. SRI.K.VINOD CHANDRAN
SRI.S.SANTHOSH

THIS COMPANY APPEAL HAVING BEEN FINALLY HEARD ON 12/06/2007, ALONG WITH COA NO. 18 OF 2003 AND CONNECTED CASES , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

CO.APPEAL.NOS.17, 18, 21 & 28 OF 2003 ()

Dated this the 12th day of June, 2007

J U D G M E N T

KOSHY,J.

These appeals are filed against the common order passed in C.P.Nos.17/2002 and 18/2002 by the Company Law Board. The petition in C.P.No.17/2002 is filed under Sections 397/398 of the Companies Act, 1956 alleging acts of oppression and mismanagement in the affairs of the M/s. Supra HiTech Electro Equipments Private Limited ("SHEEPL"). The petition in C.P.No.18/2002 is filed under Section 397/398 of the Act alleging acts of oppression and mismanagement in the affairs of M/s. Supratronics Private Limited ("SPL").

2. After hearing detailed contentions and allegations, the Company Law Board appointed a Chartered Accountant to verify the accounts. The main allegation was that large amounts of the company was diverted to other companies.

Tribunal considered the contentions and opined as follows:

> "We are, therefore, of the opinion unless accounts of SPL, SHEEPL, LOPPL, SPRC and PLTPL are scrutinized by a Chartered Accountant, the extent of diversion of the products of SHEEPL in the name of LOPPL, SPRC and PLTPL, if any, cannot be measured. We, accordingly, appoint Sri.Jomon K.George, Chartered Accountant to scrutinize the accounts of SPL, SHEEPL, LOPPL, SPRC AND PLTPL from the years 1998-1999 onwards to find out the extent of manipulations, if any on the part of respondents 2 and 3 and whether these two companies were lost benefits due to such manipulations. In case it is established that these companies have suffered due to diversion then the amount of loss so quantified must be reimbursed by the respondents 2 and 3 to SPL and SHEEPL within one month of the report of the Auditor, and the accounts of both the companies should be recast thereafter. During the hearing, considering the fact that the relationship between the petitioner and the second respondent has become irreconcilable, we suggested to the parties that one of them should go out of the Companies. The petitioner was willing to go out of the Companies to which the second and third respondents had no objections but they could not agree on a proper consideration to be paid for the shares held by the petitioners in both the companies. The petitioner was claiming a higher consideration on the basis that there had been diversion of business/products of these two companies by the second respondent which was denied by the second respondent. Now that we have appointed a Chartered Accountant to verify the accounts of all the companies involved in these transactions and quantify the losses, if any, occasioned to these two respondents companies, we are of the view that on the basis of the recasting accounts thereafter, the fair

> price of the shares of these two companies could be determined so that the petitioner can go out of the Company on receipt of consideration for his shares on the basis of the fair value so computed. Accordingly, we direct Sri.Jomon K. George, Chartered Accountant to determine the fair value of the shares of these companies within two months from the date of recasting the accounts as already directed and the second respondent or his nominee should purchase the shares held by the petitioner in these two companies at the fair value so determined. The Companies will negotiate the fees payable to Sri.Jomon K. George for undertaking the entire assignment and pay the same. This should be done within a period of 15 days of receipt of this order. All the companies involved in the transaction will render necessary assistance to the Chartered Accountant including producing all information required by him. His findings on the verification of accounts, recasting of accounts and computation of the fair value shall be final. Both the sides are at liberty to make both oral and written submissions before the Chartered Accountant who will take into consideration these submissions."

Petitioner filed appeals mainly contending that petition was filed for taking action under Section 397 and 398 of the Companies Act. Tribunal only allowed a Chartered Accountant to verify the accounts and no further relief was granted. Respondent company also filed appeal contending that since that is statutory audit, appointment by authorities is unnecessary. Prima facie, after verifying documents and when

Company Law Board feels that an Auditor is to be appointed to look into the serious allegations made by the petitioner, it is free to appoint an independent Auditor. If the accounts are correct and amounts are not diverted as alleged, audit by an independent Chartered accountant will not in any way prejudice the company. Hence appeals filed by the Company is liable to be dismissed. After verification, if it is found that further actions are necessary, again parties can approach the Company Law Board for taking appropriate action. Petitioners remedies are not exhausted and they can again approach the Company Law Board. We leave such remedies open. Hence these appeals are dismissed without prejudice to the rights of the parties to approach the Company Law Board again if circumstances warrants.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

8th June, 2007